

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF3007
JOSEFINA RODRIGUEZ)	EEOC NO.: 21BA81831
)	ALS NO.: 09-0498
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Josefina Rodriguez's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF3007; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On January 17, 2008, the Petitioner filed a charge of discrimination with the Respondent, perfected on May 21, 2008. The Petitioner alleged in her charge that her former employer Holum & Sons Co., ("Employer") denied her severance pay in retaliation for having filed a previous charge of discrimination with the Respondent, in violation of Section 6-101(A) of the Illinois Human Rights Act (the "Act"). On August 11, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On October 14, 2009, the Petitioner timely filed her Request.
2. The Petitioner, a former Lead Operator for the Employer, had previously filed a charge of discrimination against the Employer on March 20, 2007. On December 6, 2007, the Petitioner was discharged and was not given severance pay.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. The Employer stated the Petitioner did not receive severance pay because the Employer had discontinued severance pay for all of its employees after the Employer's Collective Bargaining Agreement ("CBA") with its employees' union had expired in 2006. When the CBA expired, its employees, including the Petitioner, had opted out of the CBA and no new CBA was implemented.
4. The Respondent determined that since 2006, the Employer had not given severance pay to any of its discharged employees.
5. However, the Petitioner argues in her charge and her Request that the Employer denied her severance pay in retaliation for her having engaged in protected activity in March 2007.
6. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because it found no substantial evidence the Employer's stated reason for denying the Petitioner severance pay was pretext for retaliation.

CONCLUSION

The Commission concludes that the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

The Commission finds no substantial evidence that the Employer denied the Petitioner severance pay in retaliation for having filed a previous charge of discrimination. Rather, the undisputed evidence shows that at the time the Employer terminated the Petitioner, the Employer no longer provided severance pay to any of its terminated employees. Hence, the Petitioner was treated the same as all other similarly situated employees who had not engaged in protected activity. Since there is no substantial evidence the Employer was motivated by any unlawful reason, the Commission finds no reason to disturb the Respondent's determination.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Page 3 of 3

In the Matter of the Request for Review by: Josefina Rodriguez

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Holum & Sons Co., as Respondents with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

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Entered this 12th day of May 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box